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Attorney for Defendant:
STEVEN VARGEM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVEN LEE VARGEM,

Defendant.

CASE NO.: CR 10-00729 JW

MOTION TO STRIKE:

CLETS PRINT OUT (Doc # 24-3)

F.R.E. 802, 901/902

STATEMENT OF FACTS

1. The Government submitted, as Exhibit 3 (Doc # 24-3), what appears to be a CLETS printout showing information about Defendant VARGEM.
2. The document appears to have been generated on June 24, 2010.

STATEMENT OF LAW

3. Federal Rule of Evidence 802 generally precludes the consideration of evidence that is defined as hearsay.
4. Federal Rules of Evidence 901/902 set up the rules for the admissibility of documents that are not authenticated by a witness giving live testimony.

ARGUMENT | CONCLUSION

5. If the Government is going to present Officer Tuell as a witness at the hearing in this matter, subject to cross examination by the Defense and a

1 credibility assessment by the Court, and Officer Tuell can authenticate
2 Document 24-3, then this document might be helpful to the Court if the
3 document is otherwise admissible under the F.R.E. As it stands now, it does
4 not qualify for authentication under any of the general provisions of F.R.E.
5 901, nor does is it self-authenticating under F.R.E. 902. This document is
6 subject to a motion to strike.

7 6. Additionally, the document itself is hearsay by any definition. It does not fit
8 any of the hearsay exceptions under the rules of evidence. And its bare
9 submission without live testimony deprives the Defendant of the right of
10 cross examination in violation the "confrontation clause" of the Sixth
11 Amendment to Constitution. Document 24-3 is subject to a motion to strike
12 under F.R.E. 801/802/805.

13 Respectfully Submitted on April 12, 2011.

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15 /s/ Donald Kilmer

16 Attorney for Defendant Steven Vargem
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